

Notices

Federal Register

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

FEDERAL TRADE COMMISSION

16 CFR PART 698

RIN: 3084-AA94

SUMMARY OF RIGHTS AND NOTICES OF DUTIES UNDER THE FAIR CREDIT REPORTING ACT

AGENCY: Federal Trade Commission

ACTION: Publication of proposed notices; request for comment.

SUMMARY: Pursuant to its responsibilities under the Fair Credit Reporting Act, the Federal Trade Commission (Commission or FTC) is publishing for public comment revised versions of three documents: a summary of consumer rights, a notice of responsibilities for persons that furnish information to consumer reporting agencies, and a notice of responsibilities for persons that obtain consumer reports from consumer reporting agencies. The Commission is proposing the current revisions to incorporate changes in rights and obligations created by several new rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003. The Commission is also proposing revisions to improve the clarity and usefulness of the documents for consumers, furnishers, and users.

DATES: Comments must be received on or before September 21, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (<https://ftcpublishcommentworks.com/ftc/fcra-revised-notices>) (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135

(Annex M), 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Pavneet Singh, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2252.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 609(c) of the Fair Credit Reporting Act (FCRA), consumer reporting agencies (CRAs) are required to include a summary of consumer rights with every consumer report they provide to consumers.¹ The Commission is required to provide a model summary of rights (Summary of Rights) to be used for this purpose. In addition, section 607(d)(2) of the FCRA requires the Commission to prescribe the content of notices that CRAs must provide to those who furnish information to them (Furnisher Notice) and to those who obtain consumer reports from them (User Notice).²

The Commission originally issued these three documents in 1997.³ It issued revised versions in 2004⁴ to reflect changes made to the FCRA by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).⁵ Since then, the Commission and other financial regulators have finalized new rules under the FACT Act. The Commission is now proposing a newly revised Summary of Rights, User Notice, and Furnisher Notice to reflect these new rules, as explained further below.⁶ The

¹ 15 U.S.C. 1681g(c). Under section 609(a) of the FCRA, 15 U.S.C. 1681g(a), CRAs are required to disclose to consumers the information in their files upon request. CRAs generally refer to these disclosures as "file disclosures" and provide them in a different format than the consumer reports they provide to third parties. For purposes of this notice, the term "consumer report" includes a "file disclosure" from a CRA to a consumer.

² 15 U.S.C. 1681e(d).

³ 62 FR 35586 (1997).

⁴ 69 FR 69776 (2004).

⁵ Pub. L. 108-159, 117 Stat. 1952 (2003).

⁶ At this time, the Commission is not issuing a revised version of the identity theft rights summary required by section 609(d) of the FCRA. The Commission is currently undertaking a survey of identity theft victims who contacted the FTC and expects that when completed, the results of that survey may influence any future revisions of the identity theft rights summary. See 73 FR 37457 (2009).

proposed revised versions are also intended to improve the clarity and usefulness of the documents for consumers, furnishers, and users. For comparison, the 2004 versions of these notices can be found at (www.ftc.gov/opa/2004/11/facta.shtm).

II. Summary of the Proposed Revised Notices

A. Summary of Rights (Appendix F to 16 CFR 698)

Section 609(c) of the FCRA requires the Commission to issue a model Summary of Rights, which must include an explanation of (1) the consumer's right to obtain his or her consumer report; (2) the frequency and circumstances under which a consumer may receive free consumer reports under the FCRA; (3) the right of a consumer to dispute incorrect or outdated information in his or her consumer report; and (4) the right of a consumer to obtain a credit score.⁷

With respect to a consumer's right to dispute information in his or her consumer report, on July 1, 2009, the Commission and other federal regulatory agencies issued the Furnisher Direct Dispute Rule, which took effect on July 1, 2010. Prior to the effective date of this Rule, under the FCRA, consumers had a right to dispute the accuracy of information in their consumer reports only by filing a dispute with a CRA. Under the Furnisher Direct Dispute Rule, consumers may dispute the accuracy of information in their consumer report directly with the furnisher of that information as well as the CRA. The proposed revised Summary of Rights reflects this additional dispute right. Because it is difficult to inform consumers fully of their dispute rights in a summary fashion, the proposed revised Summary of Rights also directs consumers to the Commission's website for more information about disputing consumer report errors.⁸

⁷ Section 609(c) also requires that CRAs notify consumers that they may have additional rights under state law and that the FCRA does not require accurate, current derogatory information to be removed from consumers' files. Thus, the Commission has also included this information in its Summary of Rights.

⁸ The Commission is concurrently updating its consumer education materials on disputing errors in credit reports to reflect consumers' new right to

Continued

In addition, the proposed revised Summary of Rights reflects changes to improve the clarity and readability of the document. The changes include reordering some of the information provided, as well as making formatting changes and minor wording changes to certain sections.

Finally, in order to keep the Summary of Rights sufficiently brief and to improve its readability, the proposed revised Summary of Rights deletes certain information that the Commission is not required to include. The current Summary of Rights incorporates a list of Federal agencies responsible for enforcing the FCRA, which the CRAs are also required to provide to consumers with their consumer reports. However, the FCRA does not require this list to be included in the Summary of Rights. Accordingly, the Commission proposes not to include this information in the proposed revised Summary of Rights. Instead, the Commission proposes to make available on its website a separate document that lists the Federal agencies responsible for enforcing the FCRA, along with their addresses, phone numbers, and website addresses, which can be updated more easily. CRAs may use this document to satisfy their obligation to provide consumers a list of Federal agencies responsible for enforcing the FCRA.

B. Furnisher Notice (Appendix G to 16 CFR 698)

The proposed revised Furnisher Notice reflects the new duties of furnishers set forth in the Furnisher Direct Dispute Rule described above. It also reflects new duties contained in the Furnisher Accuracy Rule, which became effective on July 1, 2010. The Rule requires furnishers to establish policies and procedures to ensure the accuracy and integrity of the consumer report information they furnish to CRAs, and to consider the guidelines prescribed by the agencies in establishing these policies and procedures. In addition, the proposed revised Furnisher Notice also includes revisions to improve the clarity and readability of the document.⁹

C. User Notice (Appendix H to 16 CFR 698)

The proposed revised User Notice reflects the new duties of users set forth in several of the rules finalized pursuant to the FACT Act. First, effective January 1, 2011, the Risk-Based Pricing Rule

will require users of consumer reports to provide risk-based pricing notices in certain circumstances if they extend credit to a particular consumer on less favorable terms than those they offer to others. As an alternative to providing risk-based pricing notices, the Rule permits such users to provide consumers who apply for credit with a free credit score and information about their credit score. Second, if a CRA notifies a user of consumer reports that the address the user provided about a consumer is different from the address in the consumer report, the Address Discrepancy Rule, which became effective on January 1, 2008, requires the user to implement reasonable procedures to verify that the consumer report relates to the correct consumer. Users of consumer reports that verify the address is accurate, and that regularly furnish information to the CRA, have additional responsibilities under the Rule. Finally, the Medical Information Rules, which became effective on April 1, 2006, prescribe the circumstances under which creditors may obtain, use, and share medical information. The proposed revised User Notice has been revised to reflect all of these obligations, as well as to improve the clarity and readability of the document.¹⁰

III. Request for Comments

The Commission invites comment on all aspects of the proposed revised Summary of Rights, Furnisher Notice, and User Notice. The Commission also invites comment from all interested parties on the following issues:

Summary of Rights (Appendix F)

- Has the existing Summary of Rights been effective in informing consumers about their rights under the FCRA?

- Has the Commission included all of the rights that should be included in the model summary?

- Has the Commission clearly and sufficiently described a consumer's ability to dispute inaccurate consumer report information with both the furnisher of the information and with the CRA? Is it useful to provide a reference to the FTC's website for additional information about disputing such errors?

- Is it appropriate to provide information about the Federal agencies responsible for enforcing the FCRA and the contact information for these agencies in a separate document, which

will be made available on the FTC's website?

- Are there areas where the understandability of the proposed revised Summary of Rights could be improved? Are there any sections for which the language does not accurately convey the substance of the provision? If so, how could such sections be improved?

- The proposed revised Summary of Rights uses the term "credit report" to describe a consumer report under the FCRA because the Commission believes it is the term with which consumers are most familiar. However, as explained in the proposed revised Summary of Rights, consumers may obtain reports that contain non-credit information, such as rental or medical history information. Should an additional or alternate term be used to describe these types of reports? Would it be more effective and is it feasible to create a separate model Summary of Rights to send to consumers who request reports that contain non-credit information?

Furnisher Notice (Appendix G)

- Is the proposed revised Furnisher Notice accurate and easy to understand? In what ways could it be improved?

- The Commission expects that the Furnisher Notice will be sent to a wide range of entities with varying degrees of legal sophistication. Are the duties set forth in the proposed notice clear and understandable? Could the description of the duties be improved?

- Does the deletion of the citations to the relevant sections of the FCRA from the text to the endnotes improve the readability of the document? Or are the citations necessary for furnishers to locate and understand their statutory obligations?

User Notice (Appendix H)

- The proposed revised User Notice discusses the principal portions of the FCRA that impose obligations upon those who receive consumer reports. Should additional information be included in the notice?

- The Commission expects that the User Notice will be sent to a wide range of users with varying degrees of legal sophistication. Are the duties set forth in the proposed notice clear and easy to understand? Could the description of the duties be improved?

- Does the deletion of the citations to the relevant sections of the FCRA from the text to the endnotes improve the readability of the document? Or are the citations necessary for users to locate and understand their statutory obligations?

dispute inaccurate information directly with furnishers.

⁹ These revisions include deleting citation references to the relevant sections of the FCRA from the text of the Notice and placing them in endnotes to make the document easier to read.

¹⁰ As with the Furnisher Notice, these revisions include deleting citation references to the relevant sections of the FCRA from the text of the User Notice and placing them in endnotes.

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “FACTA Notices, Project No. P105408,” to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (<http://www.ftc.gov/os/publiccomments.shtm>).

Because comments will be made public, they should not include any sensitive personal information, such as any individual’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include “trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential” as provided in Section 6(f) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c).¹¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink: (<https://ftcpublic.commentworks.com/ftc/fcrarevisednotices>) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (<https://ftcpublic.commentworks.com/ftc/fcrarevisednotices>). If this Notice appears at (<http://www.regulations.gov/search/Regs/home.html#home>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (<http://www.ftc.gov>)

to read the Notice and the news release describing it.

A comment filed in paper form should include the “FACTA Notices, Project No. P105408” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex M), 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtm>). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at (<http://www.ftc.gov/ftc/privacy.htm>).

IV. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner’s advisor will be placed on the public record.¹²

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501-3521, the Commission reviewed the summary of rights and the furnisher and user notices for compliance with the PRA when it issued them in 1997 and when it revised them in 2004. At both times, the Commission concluded that the summary and notices consisted of information that is supplied by the Federal government. Accordingly, the Commission determined that these notices do not constitute a “collection of information” as this term is defined in the regulations implementing the PRA,

nor do the financial resources expended in relation to the distribution of these documents constitute a paperwork burden. *See* 5 CFR 1320.3(c)(2). The Commission has reviewed the proposed changes to the current summary and notices. The Commission has concluded, consistent with its analyses in 1997 and 2004, that the proposed summary and notices do not fall within the definition of “collection of information” covered by the PRA because they are “[t]he public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public . . .” 5 CFR 1320.3(c)(2).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with any action that may constitute a rule unless the Commission certifies that the action will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. The Commission concludes that the proposed revised Summary of Rights, Furnisher Notice, and User Notice will not have a significant economic impact on a substantial number of small entities, as discussed below. Accordingly, this document serves as notice to the Small Business Administration of the agency’s certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed revised summary or notices will have a significant impact on a substantial number of small entities, including specific information on the number of entities that will be covered by the proposed rules, the number of these entities that are small, and the average annual burden for each entity. To assist commenters, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

The agency has undertaken this proceeding to implement provisions of the FCRA. Specifically, section 609(c) of the FCRA requires the Commission to prepare the Summary of Rights for consumers and section 607(d) requires the Commission to issue the Furnisher Notice and User Notice. All of these documents will be distributed by CRAs.

B. The Proposal’s Objectives and Legal Basis

The objective of the Commission’s action is the issuance of a proposed

¹¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

¹² *See* 16 CFR 1.26(b)(5).

revised Summary of Rights, Furnisher Notice, and User Notice to educate consumers, furnishers of information to CRAs, and users of information from CRAs as to their rights or duties under the FCRA. As noted earlier, the legal bases for the proposed summary and notices are sections 609(c) and 607(d) of the FCRA, respectively.

C. Small Entities to Which the Proposed Rule Will Apply

The proposed revised Summary of Rights, Furnisher Notice, and User Notice are to be distributed by CRAs. The consumer reporting industry is composed primarily of “nationwide” CRAs and “nationwide specialty” CRAs, as defined in FCRA sections 603(p) and 603(w), respectively. The Commission believes that the nationwide and nationwide specialty CRAs will be responsible for much of the distribution of the summary and notices. The Commission believes that none of the nationwide CRAs is a “small” entity.¹³ There are, however, small CRAs associated with the nationwide CRAs, and there are small, independent CRAs. Based on the membership of the major CRA trade associations, the Commission believes that the total universe of entities potentially covered by the requirement to distribute the summary and notices is between 600 and 1000. The Commission does not know how many of these entities are “small.” The Commission invites comments on the number of “small” entities that will be affected by its proposal.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule would impose no specific reporting or recordkeeping requirements. CRAs will be required, however, to distribute the prescribed summary and notices. The Summary of Rights will be distributed with each consumer report provided to consumers by CRAs, and will be distributed to large numbers of consumers each year. The CRAs will need to distribute the revised Furnisher Notice and User Notice on a one-time basis to all of the entities that furnish information to a CRA or use information obtained from a CRA, even if they were previously sent a prior

version of the notices. However, the Commission does not believe that this requirement will increase in any significant way the burdens already imposed by the FCRA on CRAs. Because the Commission is providing the language for the summary and notices, businesses need not incur legal or other professional costs to develop any new written material. The cost of training employees, if any, should be minimal. Moreover, when the Furnisher Notice and User Notice are distributed electronically, the Commission believes the distribution costs will be negligible.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed summary or notices. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

In some situations, the Commission has considered adopting a delayed effective date for small entities subject to new regulation in order to provide them with additional time to come into compliance. In this case, however, the Commission proposes not to delay the effective date because small entities will be given the texts of the proposed summary and notices to be distributed and will not incur additional costs in developing them.

The Commission seeks comment and information with regard to (1) the existence of small business entities for which distribution of the required Summary of Rights, Furnisher Notices, and User Notices would have a significant economic impact; and (2) suggested alternative methods of compliance that, consistent with the statutory requirements, would reduce the economic impact of the requirements of this proceeding on these entities. If the comments filed in response to this notice identify small entities that are significantly affected, as well as alternative methods of compliance that would reduce the economic impact on such entities, the Commission will consider the feasibility of such alternatives.

List of Subjects in 16 CFR Part 698

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

■ Accordingly, pursuant to 15 U.S.C. 1681e and 1681g, the Federal Trade Commission hereby proposes to amend Part 698, chapter 1, title 16, Code of Federal Regulations, as follows:

■ 1. The authority citation for this part continues to read as follows:

Authority: 15 U.S.C. 1681e, 1681g, 1681s, and 1681j; 117 Stat. 1952; Pub. L. 108–159, sections 151, 153, 211(c) and (d), 213, and 311.

■ 2. Revise Appendices F through H to read as follows:

APPENDIX F TO PART 698—GENERAL SUMMARY OF CONSUMER RIGHTS

The prescribed form for this summary is a disclosure that is substantially similar to the Commission’s model summary with all information clearly and prominently displayed. A separate list of federal regulators is available at the Commission’s website at (www.ftc.gov/credit). A summary should accurately reflect changes to those items that may change over time (e.g., dollar amounts or telephone numbers) to remain in compliance. Translations of this summary will be in compliance with the Commission’s model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

[Place FCRA Proposed Notices Appendix F.pdf here]

APPENDIX G TO PART 698—NOTICE OF FURNISHER RESPONSIBILITIES

The prescribed form for this disclosure is a separate document that is substantially similar to the Commission’s model notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the furnisher that will receive the notice.

[Place FCRA Proposed Notices Appendix G.pdf here]

APPENDIX H TO PART 698—NOTICE OF USER RESPONSIBILITIES

The prescribed form for this disclosure is a separate document that is substantially similar to the Commission’s notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the user that will receive the notice.

[Place FCRA Proposed Notices Appendix H.pdf here]

By direction of the Commission.

Donald S. Clark,
Secretary

[FR Doc. 10–???? Filed ??–??–10; 7:35 am]

Billing Code 6750–01–S

¹³ CRAs subject to the Commission’s jurisdiction with annual receipts of \$7 million or less are considered small businesses. A list of the SBA’s size standards for all industries can be found at (http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf) (last visited June 25, 2010).